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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Barry et al.

Serial Number: 09/748,804

Filed: December 27, 2000

For: DISHWASHER SILVERWARE
BASKET WITH SWIVEL
HANDLE

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: Group Art Unit: 3727
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: Examiner: Moy, Joseph Man
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APPELLANTS' BRIEF

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A Notice of Appeal in this Application was mailed on June 5, 2003. This brief is transmitted in triplicate and the fee required under 37 C.F.R. § 1.17(c) was previously submitted as set forth in the accompanying transmittal letter. This brief contains the following sections under the following headings and in the order set forth below.

- I. Real Party in Interest
- II. Related Appeals and Interferences
- III. Status of Claims
- IV. Status of Amendments
- V. Summary of Invention
- VI. Issues
- VII. Grouping of Claims
- VIII. Argument
- Appendix A. Claims Involved in the Appeal

I. REAL PARTY IN INTEREST

The real party in interest in this appeal is General Electric Company, Schenectady, New York, 12345.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences which will directly affect, or be directly affected by, or have a bearing on, the decision in this pending appeal.

III. STATUS OF CLAIMS

Eighteen (18) claims, in total, are in this application. Particularly, this Application was originally filed with sixteen (16) claims, namely Claims 1-16, and Claims 17 and 18 were added by amendment on November 1, 2002. Claims 1-18 are currently pending and stand rejected. Claims 1-18 are on appeal.

IV. STATUS OF AMENDMENTS

An amendment under 37 C.F.R. § 1.116 was filed on August 1, 2003. An advisory action mailed on September 24, 2003 indicated that the August 1 amendment would not be entered.

A Request for Reconsideration was filed on March 14, 2003. An Advisory Action was issued by the examiner in response to the Request for Reconsideration. The Advisory Action indicated that "[t]he request for reconsideration has been considered but does NOT place the application in condition for allowance because: dish washer basket is old and the movable handle is old. The mere combination of two old features together with no unobvious and unexpected result is well within the pureview[sic] of one skilled in the art. The novelty

of applicant's invention is directed to the specific movable structure at the handle not the broad concept of a silverware basket with a movable handle (see claim 1). However, such novelty is not specifically set forth in the claims" (Advisory Action, Page 2, Lines 1-4). The Advisory Action indicated that Claims 1-18 are pending and that Claims 1-18 are rejected.

V. SUMMARY OF THE INVENTION

The following summary correlates claim elements to specific embodiments described in the application specification. The following summary does not limit in any manner whatsoever the claim interpretation. Rather, the following summary is provided only to facilitate the Board's understanding of the subject matter of this appeal.

In an exemplary embodiment of the invention, a silverware basket assembly for a dishwashing machine includes a basket defining at least one compartment for receiving silverware, and a handle attached to the basket that is selectively positionable between a first position and a second position. In the first position, the handle is directly overhead the basket compartment for ease of carrying the basket, and in the second position the handle is pivoted relative to the basket to a sideward position allowing substantially unobstructed access to the silverware basket compartment.

More specifically, the basket includes at least one handle bracket for attaching the handle, and the handle is configured for engaging the handle bracket and maintaining the handle in either the first position or the second position. The bracket includes a crown surface, and the handle includes a peg for insertion into the crown surface. The peg and crown have substantially complementary outer surfaces. The crown includes first and second detents that engage a projection on the peg outer surface to maintain the handle in one of the first or second positions. The detents in the handle bracket crown prevent unintentional movement of the handle between the first and second positions, and provide a sturdy feel to a user in either position. The handle extends substantially parallel to a longitudinal axis of the basket, and includes contoured finger grips for easy gripping and handling by the user.

Claim 1 recites a basket assembly 10 for a dishwashing machine including a basket 12 defining at least one compartment 18 having a lattice structure for spray action cleaning of items therein, and a handle 16 attached to the basket 12 at opposite ends thereof. The handle

16 is selectively positionable between a first position and a second position. One of the first and second positions allows substantially unobstructed access to the compartment 18 for loading and unloading of silverware. See Specification, Figure 1, and accompanying text at Page 3, lines 10-16, and Figure 8, and accompanying text at Page 5, line 24 to Page 6, line 5.

Claim 2 depends from Claim 1 and further recites that the basket 12 comprises at least one handle bracket 90 and that the handle 16 is attached to the bracket 90. The bracket 90 is configured for maintaining the handle 16 in the first position and the second position. See Specification, Figure 6, and accompanying text at Page 5, lines 3-8, and Figure 7, and accompanying text at Page 5, lines 17-20.

Claim 3 depends from Claim 2 and further recites that the basket 12 comprises a longitudinal axis 78, and that the handle 16 extends substantially parallel to the longitudinal axis 78. See Specification, Figure 5 and accompanying text at Page 4, lines 21-25, and Page 5, lines 26-30.

Claim 4 depends from Claim 2 and further recites that the handle 16 is contoured with finger grips 34 formed therein. See Specification, Figure 2 and accompanying text at Page 4, lines 3-4.

Claim 5 depends from Claim 2 and further recites that the bracket 90 comprises a crown 104, and that the handle comprises a peg 38 for insertion into the crown 104, with one of the peg 38 and the crown 104 including a first detent 106 and a second detent 108 therein, and the other of the peg 38 and the crown 104 comprising a projection 60 for engagement with the first detent 106 and the second detent 108. See Specification, Figure 7 and accompanying text at Page 5, lines 9-20, and Figure 4 and accompanying text at Page 4, lines 16-18.

Claim 6 depends from Claim 5 and further recites that the handle 16 includes a gripper portion 30 and an attachment portion 32 extending therefrom, and that the peg 38 extends from the attachment portion 32. See Specification, Figures 2 and 3 and accompanying text at Page 4, lines 1-7.

Claim 7 depends from Claim 5 and further recites that the crown 104 is substantially round. See Specification, Figure 7 and accompanying text at Page 5, line 12.

Claim 8 depends from Claim 5 and further recites that the detent 106, 108 is substantially round. See Specification, Figure 7.

Claim 9 depends from Claim 5 and further recites that the handle 16 is channel-shaped in cross section. See Specification, Figure 3 and accompanying text at Page 4, lines 8-10.

Claim 10 is an independent claim and recites a basket assembly 10 for a dishwashing machine that comprises a substantially rectangular silverware basket 12 that comprises first and second lateral side walls 74 having a first length and first and second longitudinal side walls 70, 72 having a second length. The second length is greater than the first length, and each of the side walls 70, 72, 74 has a structure to permit water spray action cleaning of items therein. The basket assembly 10 further comprises a handle 16 attached to and extending between the lateral side walls 74 and comprising a contoured gripper portion 30. The handle 16 is selectively positionable between a first position and a second position, and one of the first and second positions allows substantially unobstructed access to the compartment 18 for loading and unloading of silverware. See Specification, Figure 5 and accompanying text at Page 4, lines 21-28, Figure 3 and accompanying text at Page 4, lines 8-11, and Figure 8, and accompanying text at Page 6, lines 4-5.

Claim 11 depends from Claim 5 and further recites that the gripper portion 30 is U-shaped in cross section. See Specification, Figure 3 and accompanying text at Page 4, lines 8-11.

Claim 12 depends from Claim 10 and recites that the basket 12 further comprises a handle bracket 90 attached to each of the lateral side walls 74, and that the handle 16 is attached to the bracket 90. The bracket 90 is configured for maintaining the handle 16 in the first position and the second position. See Specification, Figure 6, and accompanying text at Page 5, lines 3-8, and Figure 7, and accompanying text at Page 5, lines 17-20.

Claim 13 depends from Claim 11 and further recites that handle 16 comprises opposite attachment portions 32 extending from the gripper portion 30, and that each of the attachment portions 32 comprises a peg 38 configured to be received by the handle brackets 90. See Specification, Figure 2 and accompanying text at Page 4, lines 1-7.

Claim 14 depends from Claim 13 and further recites that each of the brackets 90 comprises a crown 104, and that one of the pegs 38 and the crowns 104 includes a first detent 106 and a second detent 108 therein. The other of the pegs 38 and the crowns 104 comprise a projection 60 for engagement with the first detent 106 and the second detent 108. See Specification, Figure 7, and accompanying text at Page 5, lines 9-20, and Figure 4, and accompanying text at Page 4, lines 16-18.

Claim 15 depends from Claim 14 and further recites that the crown 104 is substantially round. See Specification, Figure 7 and accompanying text at Page 5, line 12.

Claim 16 depends from Claim 14 and further recites that the detent 106, 108, 110 is substantially round. See Specification, Figure 7.

Claim 17 is an independent claim and recites a basket assembly 10 for a dishwashing machine that comprises a silverware basket 12 that defines a longitudinally extending silverware compartment 18 configured for spray action cleaning of items therein, and a handle 16 attached to the basket 12 and extending longitudinally above the compartment 18 in a first position. The handle 16 is movable to a second position that allows substantially unobstructed access to the compartment 18 for loading and unloading of silverware. See Specification, Figure 1, and accompanying text at Page 3, lines 10-16, and Figure 8, and accompanying text at Page 5, line 24 to Page 6, line 5.

Claim 18 is an independent claim and recites a basket assembly 10 for a dishwashing machine that comprises a substantially rectangular silverware basket 12 comprising first and second lateral side walls 74 having a first length and first and second longitudinal side walls 70, 72 having a second length, the second length greater than the first length. Each of the side walls 70, 72, 74 is configured to permit spray action cleaning of items placed in the basket 12. The basket assembly 10 also includes a handle bracket 90 attached to each of the lateral side walls 74, and a pivotally mounted handle 16 attached to each of the lateral side walls 74 at a respective one of the brackets 90. The handle 16 comprises a gripper portion 30 extending substantially parallel to the longitudinal side walls 70, 72 and substantially centered overhead the basket 12 in a first position. The handle 16 is positionable to a second position wherein the gripper portion 30 is located laterally from the first position, thereby allowing substantially unobstructed access to the compartment 18 for loading and unloading

of silverware. See Specification, Figure 5, and accompanying text at Page 4, line 21 to Page 5, line 2. See also Specification, Figure 2, and accompanying text at Page 4, lines 1-2, and also Page 5, line 30 to Page 6, line 5.

VI. ISSUES

Whether Claims 1-18 are unpatentable under 35 U.S.C. § 103(a) over Stottmann et al. (U.S. Patent No. 5,431,294) in view of Perkins et al. (U.S. Patent No. 6,257,440) or Andreaggi et al. (U.S. Patent No. 3,924,775).

VII. GROUPING OF CLAIMS

All rejected claims (i.e., Claims 1-18) do not stand or fall together as discussed below in detail. Claim 1 stands alone and support for this position can be found beginning at page 14 in the Argument section of this brief. Claims 2 and 4-9 stand and fall together and support for this position can be found beginning at page 15 in the Argument section of this brief. Claim 3 stands alone and support for this position can be found beginning at page 15 in the Argument section of this brief. Claims 10 stands alone and support for this position can be found beginning at page 16 in the Argument section of this brief. Claims 11 and 13-16 stand and fall together and support for this position can be found beginning at page 17 in the Argument section of this brief. Claim 12 stands alone and support for this position can be found beginning at page 17 in the Argument section of this brief. Claim 17 stands alone and support for this position can be found beginning at page 18 in the Argument section of this brief. Claim 18 stands alone and support for this position can be found beginning at page 19 in the Argument section of this brief.

VIII. ARGUMENT

Applicants respectfully submit that the structure recited in each pending claim in the present application is patentable over the art cited by the Examiner in rejecting such claims. Accordingly, Applicants respectfully traverse the rejections of the pending claims, and request that the final rejections be withdrawn and that the pending claims be allowed. In support of these requests, a background discussion and a summary description of the

structures recited in the claims are provided below. Also, a discussion regarding the patentability of such structures is set forth below.

A. Background

The present invention is directed to overcoming shortcomings associated with silverware basket assemblies used in automatic washing machines. Conventional dishwashing machines include a washing chamber in which upper and lower dishware racks are slidably mounted. The racks are lattice structures adapted for holding dishes, plates, cups, pots, pans, and the like while permitting water spray action for cleaning items held in the racks. As at least some items, such as silverware, flatware, and cooking utensils, are too small for the racks to accommodate, a silverware basket containing one or more compartments is typically attached to one of the racks to hold smaller items within the washing chamber. It is convenient for users to be able to remove the silverware basket from a rack to load and unload silverware and smaller items. Thus, known silverware baskets include a handle to facilitate lifting of the silverware basket from the dishwasher rack and carrying the basket, for example, to a sink where items may be loaded into the basket, or to a drawer where items may be unloaded from the basket. However, one disadvantage of many known silverware baskets is that the handles tend to obstruct the basket during loading and unloading of silverware and small items.

Applicants respectfully submit that even once the shortcomings of the known art are recognized and the needs are defined as set forth above, the art cited in the rejection of the claims presently on appeal would not lead nor even suggest to one skilled in the art the novel and non-obvious structures recited in the presently pending claims.

B. Summary Description

In one embodiment, a silverware basket assembly for a dishwashing machine includes a basket defining at least one compartment for receiving silverware, and a handle attached to the basket that is selectively positionable between a first position and a second position. In the first position, the handle is directly overhead the basket compartment for ease of carrying the basket, and in the second position the handle is pivoted relative to the basket to a

sideward position allowing substantially unobstructed access to the silverware basket compartment.

The basket includes at least one handle bracket for attaching the handle, and the handle is configured for engaging the handle bracket and maintaining the handle in either the first position or the second position. The bracket includes a crown surface, and the handle includes a peg for insertion into the crown surface. The peg and crown have substantially complementary outer surfaces. The crown includes first and second detents that engage a projection on the peg outer surface to maintain the handle in one of the first or second positions. The detents in the handle bracket crown prevent unintentional movement of the handle between the first and second positions, and provide a sturdy feel to the user in either position. The handle extends substantially parallel to a longitudinal axis of the basket, and includes contoured finger grips for easy gripping and handling by a user.

Accordingly, the above described silverware basket assembly provides a handle that facilitates transport of the basket while allowing unobstructed loading and unloading of the basket.

C. The Basket Assembly for a Dishwashing Machine Recited In Pending Claims 1-18 are Nonobvious Over Stottmann et al. in view of Perkins et al. or Andreaggi et al.

The following discussion sets forth the Section 103 rejections cited against the pending claims and summarizes current and applicable law with respect to obviousness. In addition, a discussion of the cited combinations with respect to the structures recited in each pending claim, in view of current and applicable law, is provided. A discussion of certain aspects of the final Office Action, and a claim-by-claim analysis of the pending claims also is set forth.

1. The 35 U.S.C. § 103 Rejection

In rejecting pending claims 1-18, three (3) patents were cited for the combination in the August 29, 2002 Office Action and repeated in the January 14, 2003 Office Action. More specifically, Claims 1-18 were rejected under

35 U.S.C. § 103 as being unpatentable over Stottmann et al. in view of Perkins et al. or Andreaggi et al.

2. Applicable Law With Respect To Obviousness

Section 103, in pertinent part, provides:

A patent may not be obtained . . . if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. 35 U.S.C. § 103.

As the Federal Circuit has recognized, obviousness is not established merely by combining references having different individual elements of pending claims. Ex parte Levengood, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP 2143.01. To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). In the present case, neither a suggestion or motivation to combine the prior art disclosures, nor any reasonable expectation of success has been shown.

Moreover, the Federal Circuit has determined that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. "The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the

art." In re Kotzab, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000).

In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. Stratoflex, Inc. v. Aeroquip Corp., 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); Schenck v. Nortron Corp., 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983). A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). In the present case, adding a movable handle to Stottmann et al. would frustrate the operation of the cover and would potentially frustrate the alignment of the handles when baskets are joined.

3. The Section 103 Rejections Of The Present Claims Are Not Proper Prima Facie Obviousness Rejections

The rejection of Claims 1-18 under 35 U.S.C. § 103 as being unpatentable over Stottmann et al. in view of Perkins et al. or Andreaggi et al. is respectfully traversed.

Applicants respectfully submit that the Section 103 rejection of presently pending Claims 1-18 is not a proper rejection. Specifically, the three (3) patents of the cited combination do not teach, suggest, or provide any incentive for making the claimed combination. In addition, the rejection appears to be based upon improperly using the specification of the present application as a template, and then improperly picking and choosing various

features from the cited patents in an attempt to reconstruct the structures recited in the presently pending claims.

In addition, it is asserted in the Office Action that:

it would have been obvious to substitute for the handle of the basket of Stottmann et al., a handle movable at various positions as shown by either Perkins et al. or Andreaggi et al. in order to enhance the handling process.

August 29, 2002 Office Action, page 2.

However, the failure to cite prior art that teaches or suggests the claimed subject matter cannot be overcome by the mere assertion of obviousness. More specifically, the mere assertion that this structure is well within the level of one of ordinary skill in the art at the time the invention was made does not support a prima facie obviousness rejection. Rather, each allegation of what is within the level of one of ordinary skill in the art must always be supported by citation to some reference work recognized as standard in the pertinent art and the Applicants given the opportunity to challenge the correctness of the assertion or the notoriety or reputation of the cited reference. Applicants have not been provided with the citation to any reference supporting the combination made in the rejection. The Office Action, therefore, fails to provide Applicants with a fair opportunity to respond to the rejection, and fails to provide Applicants with the opportunity to challenge the correctness of the rejection. Furthermore, in contrast to the assertion within the Office Action, Applicants respectfully submit that it would not be obvious to one skilled in the art to combine Stottmann. et al. with Perkins et al. or Andreaggi et al., because there is no motivation to combine the references suggested in the art. Additionally, the Examiner has not pointed to any prior art that teaches or suggests to combine the disclosures, other than Applicants' own teaching. Rather, only the conclusory statement that "it would have been obvious to substitute for the handle of the basket of Stottmann et al., a handle movable at various positions as shown by either Perkins et al. or Andreaggi et al. in order to enhance the handling process"

suggests combining the disclosures. For these reasons, Applicants respectfully requests that the Section 103 rejection be withdrawn.

Stottmann et al. describe a flatware basket (31) for use in a modular basket assembly in a dishwasher. The basket (31) includes a bottom wall (36) bounded by spaced apart side walls (37, 38) and end walls (39), (40) forming an open top receptacle. A vertical cross wall (50) extends between the side walls (37, 38) generally midway between the end walls (39, 40), and a handle (52) extends along and projects upwardly from the cross wall (50). A cover (65) is attached to the handle (52) and is movable between a generally vertical position within the handle (52) and a generally horizontal position on either side of the handle (52) and covering a portion of the basket (31). The handles (52) are attached across the middle of the baskets (31) and when two baskets (31) are joined, a plurality of grips come into register to form an essentially continuous means for the user to grasp in moving the assembly. Stottmann et al. col. 3, line 22 to col. 4, line 41. Notably, a movable handle would frustrate the operation of the cover and would also potentially frustrate the alignment of the handles when baskets are joined. Further, with the placement of the handle being coincident with the basket cross wall, the advantage of a movable handle is diminished.

Perkins et al. describe a bucket including a pivotally mounted strap handle. The handle (20) is attached using a rib (56) and groove (230) assembly that constitute mateable elements that allow the user to position the strap in various positions. Perkins et al., col.7, lines 23-28.

Andreaggi et al. describe a lockable angularly adjustable handle (12) attached to a housing (14) of an electrical indicating instrument (10). The handle (12) serves as a support for the instrument (10) whereby the front portion of the instrument (10) may be raised above a supporting surface while a rear portion of the instrument (10) rests on the supporting surface. Andreaggi et al., col. 3, line 40 to col. 4, line 32.

Claim 1 recites a basket assembly for a dishwashing machine including “a basket defining at least one compartment having a lattice structure for spray action cleaning of items therein; and a handle attached to said basket at opposite ends thereof, said handle selectively positionable between a first position and a second position, one of said first and second positions allowing substantially unobstructed access to said compartment for loading and unloading of silverware”.

None of Stottmann et al., Perkins et al., and Andreaggi et al., considered alone or in combination, teach or suggest a handle attached to a silverware basket at opposite ends thereof, the handle selectively positionable between a first position and a second position, one of the first and second positions allowing substantially unobstructed access to the compartment for loading and unloading of silverware. Rather, Stottmann et al. describe a basket with a transverse handle, Perkins et al. describe a handle bracket for a bucket rather than for a dishwasher basket, and Andreaggi et al., describe a lockable handle attached to the sides of an instrument housing and supporting the housing from beneath. Moreover, adding a movable handle to Stottmann et al. would frustrate the operation of the cover and would potentially frustrate the alignment of the handles when baskets are joined. Further, with the placement of the handle in Stottmann et al. being coincident with the basket cross wall, the advantage of a movable handle is diminished from the perspective of access to the basket compartments. As held in In re Gordon, if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. Therefore, it is respectfully submitted that Claim 1 is patentable over Stottmann et al. in view of Perkins et al. or Andreaggi et al.

Claims 2-9 depend from Claim 1. When the recitations of Claims 2-9 are considered in combination with the recitations of Claim 1, Applicants submit that Claims 2-9 are also patentable over Stottmann et al. in view of Perkins et al. or Andreaggi et al.

Claim 2 recites a basket assembly that includes “at least one handle bracket, said handle attached to said bracket, said bracket configured for maintaining said handle in said first position and said second position”. None of Stottmann et al., Perkins et al., and Andreaggi et al., considered alone or in combination, describe or suggest a basket for a dishwasher that includes at least one handle bracket, wherein the handle is attached to the bracket, and the bracket is configured for maintaining the handle in the first position and the second position. Rather, Stottmann et al. describe a basket with a transverse handle, Perkins et al. describe a handle bracket for a bucket rather than for a dishwasher basket, and Andreaggi et al., describe a lockable handle attached to the sides of an instrument housing and supporting the housing from beneath. Therefore, Applicants respectfully submit that Claim 2 is separately patentable over Stottmann et al. in view of Perkins et al. or Andreaggi et al.

Claims 4-9 depend from Claim 2. When the recitations of Claims 4-9 are considered in combination with the recitations of Claim 2, Applicants submit that Claims 4-9 are also separately patentable over Stottmann et al. in view of Perkins et al. or Andreaggi et al.

Moreover, Claim 3 recites that the basket includes “a longitudinal axis, said handle extending substantially parallel to said longitudinal axis”. None of Stottmann et al., Perkins et al., and Andreaggi et al., considered alone or in combination, describe or suggest a handle extending substantially parallel to a longitudinal axis of the basket. Rather, Stottmann et al. describe a basket with a transverse handle, Perkins et al. describe a handle for a bucket which has no apparent longitudinal aspect, and Andreaggi et al., describe a handle attached to the sides of an instrument housing and supporting the housing from beneath. Therefore, Applicants respectfully submit that Claim 3 is separately patentable over Stottmann et al. in view of Perkins et al. or Andreaggi et al.

Claim 10 recites a basket assembly for a dishwashing machine including “a substantially rectangular silverware basket comprising first and second lateral side walls having a first length and first and second longitudinal side walls having a second length, said second length greater than said first

length, each of said side walls having a structure to permit water spray action cleaning of items therein; and a handle attached to and extending between said lateral side walls and comprising a contoured gripper portion, said handle selectively positionable between a first position and a second position, one of said first and second positions allowing substantially unobstructed access to said compartment for loading and unloading of silverware”.

None of Stottmann et al., Perkins et al., and Andreaggi et al., considered alone or in combination, teach or suggest a handle attached to and extending between the lateral side walls of a silverware basket, the handle including a contoured gripper portion, the handle being selectively positionable between a first position and a second position, wherein one of the first and second positions allows substantially unobstructed access to the compartment for loading and unloading of silverware. Rather, Stottmann et al. describe a basket with a transverse handle, Perkins et al. describe a handle bracket for a bucket rather than for a dishwasher basket, and Andreaggi et al., describe a lockable handle attached to the sides of an instrument housing and supporting the housing from beneath. Moreover, adding a movable handle to Stottmann et al. would frustrate the operation of the cover and would potentially frustrate the alignment of the handles when baskets are joined. Further, with the placement of the handle in Stottmann et al. being coincident with the basket cross wall, the advantage of a movable handle is diminished from the perspective of access to the basket compartments. As held in In re Gordon, if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. Therefore, it is respectfully submitted that Claim 10 is separately patentable over Stottmann et al. in view of Perkins et al. or Andreaggi et al.

Claim 11 depends from Claim 5 and further recites a basket assembly “wherein said gripper portion is U-shaped in cross section”.

None of Stottmann et al., Perkins et al., and Andreaggi et al., considered alone or in combination, teach or suggest a gripper portion that is

U-shaped in cross section. Rather, Stottmann et al. describe a basket with a handle that is rectangular in cross section, Perkins et al. describe a handle for a bucket wherein the gripper portion is circular in cross section, and Andreaggi et al. describe a handle attached to the sides of an instrument housing and supporting the housing from beneath. The handle is not shown in sufficient detail to discern its cross section. The handle is described as a transversely extending bar 42 with a series of parallel ribs 62 superposed on the inner face 64 thereof so as to provide a simple handgrip for the fingers of the operator when carrying or transporting the apparatus (col. 4, lines 3-41). Therefore, Applicants respectfully submit that Claim 11 is separately patentable over Stottmann et al. in view of Perkins et al. or Andreaggi et al.

Claims 13-16 depend from Claim 11. When the recitations of Claims 13-16 are considered in combination with the recitations of Claim 11, Applicants submit that Claims 13-16 are also separately patentable over Stottmann et al. in view of Perkins et al. or Andreaggi et al.

Moreover, Claim 12 recites that the basket further includes “a handle bracket attached to each of said lateral side walls, said handle attached to said bracket, said bracket configured for maintaining said handle in said first position and said second position.” None of Stottmann et al., Perkins et al., and Andreaggi et al., considered alone or in combination, describe or suggest a handle bracket attached to lateral side walls of the basket. Rather, Stottmann et al. describe a transverse handle attached to the longitudinal sides of a basket, Perkins et al. describe a handle for a round bucket, and Andreaggi et al. describe a transverse handle that supports an electrical instrument. Therefore, Applicants respectfully submit that Claim 12 is separately patentable over Stottmann et al. in view of Perkins et al. or Andreaggi et al.

Claim 17 recites a basket assembly for a dishwashing machine including “a silverware basket defining a longitudinally extending silverware compartment configured for spray action cleaning of items therein” and “a handle attached to said basket and extending longitudinally above said compartment in a first position, said handle movable to a second position

allowing substantially unobstructed access to said compartment for loading and unloading of silverware”.

None of Stottmann et al., Perkins et al. and Andreaggi et al., considered alone or in combination, describe or suggest a basket having a longitudinally extending silverware compartment configured for spray action cleaning of items therein and a handle attached to the basket and extending longitudinally above the compartment in a first position, the handle movable to a second position allowing substantially unobstructed access to the compartment for loading and unloading of silverware. Rather, Stottmann et al. describe a flatware basket including a cross wall extending between side walls and about half way between end walls of the basket, and a stationary handle attached to the cross wall and extending laterally between the basket side walls. Stottmann et al. do not describe or suggest a flatware basket including a movable handle, and do not describe a longitudinally extending handle attached to the basket. Perkins et al. describe a cylindrical bucket with a movable handle attached thereto and hence is not suggestive of a longitudinal extending handle. Andreaggi et al. describe a movable handle attached to the sides of a closed instrument housing and supporting the housing from beneath the housing such that the housing is situated in an inclined position above a supporting surface. None of the cited art suggests a handle attached to a longitudinally extending basket and extending longitudinally above the compartment in a first position, the handle movable to a second position allowing substantially unobstructed access to the compartment for loading and unloading of silverware. For the reasons stated above, Applicants respectfully submit that Claim 17 is separately patentable over Stottmann et al. in view of Perkins et al. or Andreaggi et al.

Claim 18 recites a basket assembly for a dishwashing machine including “a substantially rectangular silverware basket comprising first and second lateral side walls having a first length and first and second longitudinal side walls having a second length, said second length greater than said first length, each of said side walls configured to permit spray action cleaning of

items placed in said basket,” “a handle bracket attached to each of said lateral side walls,” and “a pivotally mounted handle attached to each of lateral side walls at a respective one of said brackets, said handle comprising a gripper portion extending substantially parallel to said longitudinal side walls and substantially centered overhead said basket in a first position, said handle positionable to a second position wherein said gripper portion is located laterally from the first position, thereby allowing substantially unobstructed access to said compartment for loading and unloading of silverware”.

None of Stottmann et al., Perkins et al., and Andreaggi et al, considered alone or in combination, describe or suggest a substantially rectangular silverware basket comprising first and second lateral side walls having a first length and first and second longitudinal side walls having a second length, said second length greater than said first length, each of said side walls configured to permit spray action cleaning of items placed in said basket, a handle bracket attached to each of said lateral side walls, and a pivotally mounted handle attached to each of lateral side walls at a respective one of said brackets, said handle comprising a gripper portion extending substantially parallel to said longitudinal side walls and substantially centered overhead said basket in a first position, said handle positionable to a second position wherein said gripper portion is located laterally from the first position, thereby allowing substantially unobstructed access to said compartment for loading and unloading of silverware.

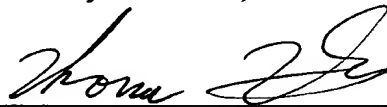
Rather, Stottmann et al. describe a flatware basket including a cross wall extending between side walls and about half way between end walls of the basket, and a stationary handle attached to the cross wall and extending laterally between the basket side walls. Stottmann et al. do not describe or suggest a flatware basket including a pivotally mounted handle, and do not describe a handle attached to brackets in the basket side walls and extending substantially parallel to longitudinal walls. Perkins et al. describe a cylindrical bucket with a movable handle attached thereto and hence is not suggestive of a longitudinally extending handle. Andreaggi et al. describe a movable handle

attached to the sides of a closed instrument housing and supporting the housing from beneath the housing such that the housing is situated in an inclined position above a supporting surface. None of the cited art suggests a handle attached to a longitudinally extending basket and extending longitudinally above said compartment in a first position, the handle movable to a second position allowing substantially unobstructed access to said compartment for loading and unloading of silverware. For the reasons stated above, Applicants respectfully submit that Claim 18 is separately patentable over Stottmann et al. in view of Perkins et al. or Andreaggi et al.

For at least the reasons set forth above, Applicants respectfully request that the Section 103 rejection of Claims 1-18 be withdrawn.

For at least the reasons set forth above, Applicants respectfully submit that the structures recited in the pending claims in the present application are patentably distinguishable over the cited art. Accordingly, Applicants respectfully request that the final rejection be withdrawn, and that the presently pending claims be allowed. Favorable action is respectfully solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Thomas M. Fisher', is written over a horizontal line.

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APPENDIX OF CLAIMS INVOLVED IN THE APPEAL

1. (previously presented) A basket assembly for a dishwashing machine comprising:

a basket defining at least one compartment having a lattice structure for spray action cleaning of items therein; and

a handle attached to said basket at opposite ends thereof, said handle selectively positionable between a first position and a second position, one of said first and second positions allowing substantially unobstructed access to said compartment for loading and unloading of silverware.
2. (original) A basket assembly in accordance with Claim 1 wherein said basket comprises at least one handle bracket, said handle attached to said bracket, said bracket configured for maintaining said handle in said first position and said second position.
3. (original) A basket assembly in accordance with Claim 2 wherein said basket comprises a longitudinal axis, said handle extending substantially parallel to said longitudinal axis.
4. (original) A basket assembly in accordance with Claim 2 wherein said handle is contoured to form finger grips therein.
5. (original) A basket assembly in accordance with Claim 2 wherein said bracket comprises a crown, said handle comprising a peg for insertion into said crown, one of said peg and said crown including a first detent and a second detent therein, the other of said peg and said crown comprising a projection for engagement with said first detent and said second detent.
6. (original) A basket assembly in accordance with Claim 5 wherein said handle includes a gripper portion and an attachment portion extending therefrom, said peg extending from said attachment portion.
7. (original) A basket assembly in accordance with Claim 5 wherein said crown is substantially round.

8. (original) A basket assembly in accordance with Claim 5 wherein said detent is substantially round.

9. (original) A basket assembly in accordance with Claim 5 wherein said handle is channel-shaped in cross section.

10. (previously presented) A basket assembly for a dishwashing machine comprising:

a substantially rectangular silverware basket comprising first and second lateral side walls having a first length and first and second longitudinal side walls having a second length, said second length greater than said first length, each of said side walls having a structure to permit water spray action cleaning of items therein; and

a handle attached to and extending between said lateral side walls and comprising a contoured gripper portion, said handle selectively positionable between a first position and a second position, one of said first and second positions allowing substantially unobstructed access to said compartment for loading and unloading of silverware.

11. (original) A basket assembly in accordance with Claim 5 wherein said gripper portion is U-shaped in cross section.

12. (original) A basket assembly in accordance with Claim 10 wherein said basket further comprises a handle bracket attached to each of said lateral side walls, said handle attached to said bracket, said bracket configured for maintaining said handle in said first position and said second position.

13. (original) A basket assembly in accordance with Claim 11 wherein said handle comprises opposite attachment portions extending from said gripper portion, each of said attachment portions comprising a peg configured to be received by said handle brackets.

14 (original) A basket assembly in accordance with Claim 13 wherein each of said brackets comprises a crown, one of said pegs and said crowns including a first detent and a second detent therein, the other of said pegs and said crowns comprising a projection for engagement with said first detent and said second detent.

15. (original) A basket assembly in accordance with Claim 14 wherein said crown is substantially round.

16. (original) A basket assembly in accordance with Claim 14 wherein said detent is substantially round.

17. (previously presented) A basket assembly for a dishwashing machine comprising:

a silverware basket defining a longitudinally extending silverware compartment configured for spray action cleaning of items therein; and

a handle attached to said basket and extending longitudinally above said compartment in a first position, said handle movable to a second position allowing substantially unobstructed access to said compartment for loading and unloading of silverware.

18. (previously presented) A basket assembly for a dishwashing machine comprising a substantially rectangular silverware basket comprising first and second lateral side walls having a first length and first and second longitudinal side walls having a second length, said second length greater than said first length, each of said side walls configured to permit spray action cleaning of items placed in said basket;

a handle bracket attached to each of said lateral side walls; and

a pivotally mounted handle attached to each of lateral side walls at a respective one of said brackets, said handle comprising a gripper portion extending substantially parallel to said longitudinal side walls and substantially centered overhead said basket in a first position, said handle positionable to a second position wherein said gripper portion is located laterally from the first position, thereby allowing substantially unobstructed access to said compartment for loading and unloading of silverware.